

WILMERHALE

March 16, 2018

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The Honorable Katherine B. Forrest
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Sacerdote, et al. v. New York University*, Case No. 16-cv-06284-KBF (S.D.N.Y.)

**LETTER FROM NON-PARTY TIAA REGARDING THE POTENTIAL
UNSEALING OF SUMMARY JUDGMENT FILINGS**

To the Honorable Katherine B. Forrest:

Non-party Teachers Insurance and Annuity Association of America (“TIAA”) submits this letter in response to the Court’s March 13, 2018 Order [ECF No. 195] (the “Order”). We understand that the parties intend to submit separately a joint status report regarding their efforts to share unsealed information with TIAA in compliance with the Order.

* * * *

The Court’s Order directed the parties to meet and confer with TIAA about the potential unsealing of Confidential TIAA documents and testimony included by the parties in their summary judgment briefing and supporting papers. The Court also “suggest[ed] that the plaintiffs and defendant show TIAA a copy of the materials that does not redact TIAA’s information”, so that TIAA could review the materials and assess whether they should continue to be sealed as confidential and proprietary business information.

On March 13, TIAA conferred with Plaintiffs regarding references to TIAA’s documents and testimony designated as Confidential and which are cited in Plaintiffs’ Memorandum in Opposition to Defendant’s Motion for Summary Judgment and Response to Defendant’s Rule 56.1 Statement and Counterstatement of Undisputed Material Facts [ECF Nos. 162 & 163], as well as Plaintiffs’ expert reports.¹ Defendant and Vanguard joined this call. Plaintiffs provided TIAA with these materials without redaction of the Confidential TIAA information. TIAA has reviewed the materials and does not oppose Columbia’s Motion to Intervene and to Unseal Documents [ECF No. 178] with respect to the unredacted Confidential TIAA information. The

¹ Expert Report of Gerald W. Buetow, dated December 22, 2017; Rebuttal Expert Report of Gerald W. Buetow, dated January 18, 2018; Corrected Expert Report of Michael J. Dicenso, dated January 18, 2018; Corrected Expert Report of Michael Geist, dated January 22, 2018; and Rebuttal Expert Report of Michael Geist, dated January 22, 2018.

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specific portions of unredacted materials provided to TIAA by Plaintiffs are detailed in Appendix A. Some of the materials include account statements and other documents regarding the Named Plaintiffs, and we understand that Plaintiffs will separately inform the Court that such materials should remain under seal or redacted in part, as set forth in their response to Columbia's motion [ECF No. 187].

On March 13, TIAA also conferred with Defendant about references to TIAA's documents and testimony designated as Confidential and which are cited in Defendant's Memorandum of Law in Support of Its Motion for Summary Judgment and Local Rule 56.1 Statement of Undisputed Material Facts [ECF Nos. 132 & 133]. Defendant provided TIAA with these materials without redaction of the Confidential TIAA information. TIAA has reviewed the materials and does not oppose Columbia's Motion to Intervene and to Unseal Documents [ECF No. 178] with respect to the unredacted Confidential TIAA information. The specific portions of unredacted materials provided to TIAA by Defendant are detailed in Appendix B. Defendant has not provided TIAA with expert reports, but confirmed that the documents and testimony designated by TIAA as Confidential and cited in those materials appear in Appendix B.

Respectfully submitted,



Lori A. Martin

cc: Stephen Hoeplinger (by e-mail only)
Andrew D. Schlichter (by e-mail only)
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APPENDIX A

I. Exhibits to Plaintiffs' Memorandum in Opposition to Defendant's Motion for Summary Judgment and Response to Defendant's Rule 56.1 Statement and Counterstatement of Undisputed Material Facts

Plaintiffs' Exhibit Number	Document
9	TIAA_NYU_00056900
10	TIAA_NYU_00054957
12	TIAA_NYU_00057399
34	Excerpts of the Deposition Transcript of Douglas Chittenden
35	TIAA_NYU_00032598
54	TIAA_NYU_00083468
64	Excerpts of the Deposition Transcript of Peter Hueber
92	TIAA_NYU_00081731
101	TIAA_NYU_00014751
118	TIAA_NYU_00021732

II. Citations in Plaintiffs' Memorandum in Opposition to Defendant's Motion for Summary Judgment

Reference	Document Cited
P. 3, Line 3	Ex. 9 TIAA_NYU_00056900
P. 24, Lines 2-5	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 109:4-112:9

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III. Citations in Plaintiffs' Response to Defendant's Rule 56.1 Statement and Counterstatement of Undisputed Material Facts

Reference	Document Cited
P. 5, ¶ 3, Bullet 2	Ex. 9 TIAA_NYU_00056900
P. 8, ¶ 3, Bullet 2	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 149:23-150:14
P. 14, ¶ 10	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 167:13-25
P. 28, FN 131, 132	Def. Ex. 6 Excerpts of the Deposition Transcript of Douglas Chittenden at 90:15-22, 181:20-24
P. 31, ¶ 31, FN 146	Def. Ex. 173 TIAA_NYU_00015338-45
P. 36, ¶ 41	Def. Ex. 73 TIAA_NYU_00016635-44; TIAA_NYU_00012750-59; TIAA_NYU_00012760-69; TIAA_NYU_00012770-81; TIAA_NYU_00012782-93; TIAA_NYU_00012794-805; TIAA_NYU_00012806-21; TIAA_NYU_00016719-34; TIAA_NYU_00016749-62
P. 38, ¶ 46	Def. Ex. 76 TIAA_NYU_00016659-68; TIAA_NYU_00013454-63; TIAA_NYU_00013464-73; TIAA_NYU_00013474-85; TIAA_NYU_00013486-97; TIAA_NYU_00013498-509; TIAA_NYU_00013510-27; TIAA_NYU_00016845-58; TIAA_NYU_00016873-86
P. 39, ¶ 48	Def. Ex. 82 TIAA_NYU_00016683-88
P. 40-41, ¶ 51	Def. Ex. 84 TIAA_NYU_00013174-85; TIAA_NYU_00013186-97; TIAA_NYU_00013198-209; TIAA_NYU_00013016-31; TIAA_NYU_00016763-78; TIAA_NYU_00016793
P. 45-46, ¶ 61	Ex. 54 TIAA_NYU_00083468
P. 61-62, ¶ 77, FN 322	Def. Ex. 96 TIAA_NYU_00031578-997

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P. 67, FN 349	Def. Ex. 6 Excerpts of the Deposition Transcript of Douglas Chittenden at 27:6-15
P. 68-70, ¶ 85	Def. Ex. 6 Excerpts of the Deposition Transcript of Douglas Chittenden at 233:6-20; Def. Ex. 100 Excerpts of the Deposition Transcript of Peter Hueber at 24:5-25:16, 31:3-11
P. 81, FN 414	Def. Ex. 114 TIAA_NYU_00003139-141
P. 82, ¶ 104	Def. Ex. 100 Excerpts of the Deposition Transcript of Peter Hueber at 47:3-25; Def. Ex. 96 TIAA_NYU_00031578-997
P. 83, ¶ 105	Def. Ex. 100 Excerpts of the Deposition Transcript of Peter Hueber at 47:3-25
P. 84, ¶ 106	Def. Ex. 96 TIAA_NYU_00031578-997
P. 85-86, ¶ 107	Def. Ex. 96 TIAA_NYU_00031578-997
P. 86, ¶ 108	Def. Ex. 96 TIAA_NYU_00031578-997
P. 87, ¶ 109	Def. Ex. 96 TIAA_NYU_00031578-997
P. 88-89, ¶ 110	Def. Ex. 96 TIAA_NYU_00031578-997
P. 95, FN 488	Def. Ex. 10 TIAA_NYU_00004772-73; Def. Ex. 118 TIAA_NYU_00004819-21
P. 101, ¶ 123	Def. Ex. 96 TIAA_NYU_00031578-997
P. 122, ¶ 140	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 109:4-112:9
P. 128, ¶ 149	Ex. 92 TIAA_NYU_00081731
P. 137, ¶ 160	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 109:4-112:9
P. 145, ¶ 185	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 109:4-122:12

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P. 146, ¶ 188	Ex. 101 TIAA_NYU_00014751
P. 146, ¶ 189	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 122:5-12
P. 148, ¶ 191, Bullet 4	Ex. 9 TIAA_NYU_00056900
P. 159, ¶ 229	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 109:4-112:9
P. 159, ¶ 231	Ex. 118 TIAA_NYU_00021732
P. 166, ¶ 256	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 149:23-150:14
P. 166, ¶ 257	Ex. 34 Excerpts of the Deposition Transcript of Douglas Chittenden at 109:4-112:9

IV. Citations in Plaintiffs' Expert Reports

Reference	Document Cited
Buetow Report P. 16	TIAA_NYU_00057405
Buetow Report P. 19	Deposition Transcript of Douglas Chittenden at 149:23-150:14
Buetow Rebuttal Report P. 2	TIAA_NYU_00032598
Buetow Rebuttal Report P. 8	Deposition Transcript of Douglas Chittenden at 149:23-150:14
Dicenso Corrected Report P. 5	Deposition Transcript of Douglas Chittenden at 81-89
Dicenso Corrected Report P. 8	N/A

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Dicenso Corrected Report P. 8, FN 2	N/A
Geist Corrected Report P. 25, ¶ 112, FN 53, 54	TIAA_NYU_00057405; TIAA_NYU_00051127
Geist Rebuttal Report P. 8, ¶ 15	TIAA_NYU_00016896; TIAA_NYU_00000213; TIAA_NYU_00017438; TIAA_NYU_00016191
Geist Rebuttal Report P. 20, ¶ 48	TIAA_NYU_000325998
Geist Rebuttal Report P. 20, ¶ 49	TIAA_NYU_00014751
Geist Rebuttal Report P. 21, ¶ 54	TIAA_NYU_00016896; TIAA_NYU_00000213; TIAA_NYU_00017438; TIAA_NYU_00016191
Geist Rebuttal Report P. 22	Table based upon TIAA_NYU_00016896; TIAA_NYU_00000213; TIAA_NYU_00017438; TIAA_NYU_00016191

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APPENDIX B

I. Exhibits to Defendant's Memorandum of Law in Support of Its Motion for Summary Judgment and Local Rule 56.1 Statement of Undisputed Material Facts

Defendant's Exhibit Number	Document
6	Excerpts of the Deposition Transcript of Douglas Chittenden
10	TIAA_NYU_00004772-73
11	TIAA_NYU_00000122-25
66	TIAA_NYU_00013752-887
67	TIAA_NYU_00013878-983
73	TIAA_NYU_00016635-44; TIAA_NYU_00012750-59; TIAA_NYU_00012760-69; TIAA_NYU_00012770-81; TIAA_NYU_00012782-93; TIAA_NYU_00012794-805; TIAA_NYU_00012806-21; TIAA_NYU_00016719-34; TIAA_NYU_00016749-62
76	TIAA_NYU_00016659-68; TIAA_NYU_00013454-63; TIAA_NYU_00013464-73; TIAA_NYU_00013474-85; TIAA_NYU_00013486-97; TIAA_NYU_00013498-509; TIAA_NYU_00013510-27; TIAA_NYU_00016845-58; TIAA_NYU_00016873-86
82	TIAA_NYU_00016683-88
84	TIAA_NYU_00013174-85; TIAA_NYU_00013186-97; TIAA_NYU_00013198-209; TIAA_NYU_00013016-31; TIAA_NYU_00016763-78; TIAA_NYU_00016793
87	TIAA_NYU_00016645-50; TIAA_NYU_00013412-17; TIAA_NYU_00013418-23; TIAA_NYU_00013424-33; TIAA_NYU_00013434-43; TIAA_NYU_00013444-53;

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	TIAA_NYU_00013210-23; TIAA_NYU_00016807-20; TIAA_NYU_00016833-44
96	TIAA_NYU_00031578-997
100	Excerpts of the Deposition Transcript of Peter Hueber
110	TIAA_NYU_00001612-15
111	TIAA_NYU_0000060-66
112	TIAA_NYU_00002345-47
113	TIAA_NYU_00000074-80
114	TIAA_NYU_00003139-141
115	TIAA_NYU_00000088-94
116	TIAA_NYU_00003985-87
117	TIAA_NYU_00000112-19
118	TIAA_NYU_00004819-21
122	TIAA_NYU_00000069-73
132	Declaration Glenn Friedman
143	TIAA_NYU_00000126-33
156	TIAA_NYU_00016220-21
157	TIAA_NYU_00015750-51
158	TIAA_NYU_00000244-46
159	TIAA_NYU_00000902-04
161	TIAA_NYU_00000213-14

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162	TIAA_NYU_00000869-70
163	TIAA_NYU_00001578-79
164	TIAA_NYU_00002308-9
165	TIAA_NYU_00003096-7
166	TIAA_NYU_00003942-43
167	TIAA_NYU_00016191
168	TIAA_NYU_00015726-27
169	TIAA_NYU_00000056-59
170	TIAA_NYU_00000069-73
171	TIAA_NYU_00000083-87
172	TIAA_NYU_00000107-111
173	TIAA_NYU_00015338-45

II. Citations in Defendant's Memorandum of Law in Support of Its Motion for Summary Judgment

Reference	Document Cited
P. 15, Lines 16-20	Ex. 132 Declaration of Glenn Friedman

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III. Citations in Defendant's Local Rule 56.1 Statement of Undisputed Material Facts

Reference	Document Cited
P. 11, FN 64	Ex. 6 Excerpts of the Deposition Transcript of Douglas Chittenden 90:15-90:22
P. 11, FN 65	Ex. 6 Excerpts of the Deposition Transcript of Douglas Chittenden 181:20-24
P. 13, ¶ 31, FN 72	Ex. 173 TIAA_NYU_00015338-45
P. 29, ¶ 77, FN 188, 189	Ex. 96 TIAA_NYU_00031578- 997
P. 32, ¶ 85, FN 201	Ex. 6 Excerpts of the Deposition Transcript of Douglas Chittenden 27:6-15
P. 38, FN 234	Ex. 114 TIAA_NYU_00003139-141
P. 43-44, ¶¶ 119-121	Ex. 132 Declaration of Glenn Friedman
P. 60, ¶¶ 160-162	Ex. 132 Declaration of Glenn Friedman

IV. Citations in Defendant's Expert Reports

Reference	Document Cited
Fischel Report	Declaration of Glenn Friedman
Wagner Report	Excerpts of the Deposition Transcript of Douglas Chittenden; Excerpts of the Deposition Transcript of Peter Hueber
Turki Report	TIAA_NYU_00084913-A
Turki Report	TIAA_NYU_00006587
Turki Report	TIAA_NYU_00007233

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Turki Report	TIAA_NYU_00008417
Turki Report	TIAA_NYU_00006587-590
Turki Report	TIAA_NYU_00007233-237
Turki Report	TIAA_NYU_00008417-421
Turki Report	TIAA_NYU_00009678-682
Turki Report	TIAA_NYU_00011096-099
Turki Report	TIAA_NYU_00006561-567
Turki Report	TIAA_NYU_00007288-294
Turki Report	TIAA_NYU_00008471-477
Turki Report	TIAA_NYU_00009728-735
Turki Report	TIAA_NYU_00011145-152